IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9847 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHMEDJAVED RASULBHAI AJMERI

Versus

COMMISSIONER OF POLICE

Appearance:

MS BANNA S DUTTA for Petitioner No. 1

MS MITA PANCHAL AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 24/09/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 21.4.2003 passed by the Police Commissioner, Ahmedabad City, against him, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring

the petitioner to be a "dangerous person" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 21.4.2003.

2. The grounds served upon the petitioner and placed on record reveal that the detaining authority took into consideration the fact of registration of crimes against the petitioner, three in number, on 3.1.2003, 11.2.2003 and 18.2.2003, under Sections 454, 457, 380 and 114 of the Indian Penal Code. In addition to this, the detaining authority has also taken into consideration two in-camera statements recorded by the sponsoring authority on 15 and 16th of April, 2003 and verified by the Detaining Authority on 19.4.2003. The witnesses reveal the incident occurred on 20.2.2003 and 1st of March, 2003. From the above material, the detaining authority passed the order on 21.4.2003 which is impugned in this Special Civil Application.

3. Learned Advocate Ms. Banna Dutta for the petitioner and learned AGP Ms. Mita Panchal for the respondents were heard at length. Learned AGP has placed on record the affidavit-in-reply of the detaining authority which is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, it appears that the matter can be dealt with and disposed of on the ground that whether there is any delay in passing of the order of detention. The factual aspect which is placed on record indicates that the last offence came to be registered against the petitioner on 18.2.2003 and the petitioner came to be arrested on 10.3.2003. However, according to the affidavit-in-reply filed, the petitioner continued his illegal activities and after collecting the evidence, the sponsoring authority recorded the statement of two witnesses on 15.4.2003 and 16.4.2003. Identity of whom was kept secret under Section 9(2) of the PASA Act. The statements came to be verified on 19.4.2003 and order was passed on 21.4.2003. It appears that the proposal was made on 17.4.2003, the statements were verified on 19.4.2003 and order came to be passed on 21.4.2003. As such, after making the proposal to the detaining authority, there is no delay in passing the order, but certainly, the delay has been caused in collecting the material and placing the same before the detaining authority. The material which collected by the sponsoring authority are the statements of two witnesses and the papers of the crimes registered against the

petitioner. This has taken at least the time gap between 10.3.2003 to 15.4.2003. This delay is fatal to the order passed against the petitioner of his detention. There was no material, except, what is stated above, which was collected by the sponsoring authority. Therefore, in this view of the matter, the order of detention is required to be quashed on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 21.4.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair